

**THE LABOR COMMISSION
WORKERS' COMPENSATION ADVISORY COUNCIL**

**Wednesday, January 15, 2014 – 12:00 P.M.
Room 319, Heber M. Wells Bldg.
Salt Lake City, Utah**

The following Advisory Council members were in attendance:

Dennis Lloyd, Workers Compensation Fund (for Ray Pickup)
Brian Kelm, Esq.
Edward Holmes, M.D., Summit View Medical
Brandon Dew, Central Utah Federation of Labor
K. Dawn Atkin, Esq., Atkin & Associates
Tracey Klausmeier, Utah Dept of Insurance
Dave Davis, President, Utah Food Industry Association
Brandt Goble, Painters and Tapers Local 77
Reo Castleton, President, SL Cnty Fire Dept Local 1696
David Bird, Esq., Parsons Behle and Latimer
Todd Bingham, President, Utah Manufacturers Association
Rep. Jim Dunnigan
Jeff Rowley, Salt Lake County

The following Advisory Council members were excused:

Richard J. Thorn, President/CEO, Associated General Contractors - Utah Chapter
Sen. Karen Mayne
Kathleen Bissell, Liberty Mutual

Others Present:

Sherrie Hayashi, Commissioner
Jaceson Maughan, Deputy Commissioner
Ron Dressler, Director, Division of Industrial Accidents, Labor Commission
Sara Danielson, Utah Labor Commission, Administrative Assistant
Elena Bensor, WPS Grant Coordinator
Heather Gunnarson, Labor Commission Adjudication Division
David Lamb, Administrative Services Division Director
Scott Stevens, Tax Commission
Glenn Wright
Francine Johnson
Jeff Roy
Sarah Nitta
Red Hollingsworth
Tracy Olson
Stan Mead, Gallaher Settlement

WELCOME

Welcome –Commissioner, Sherrie Hayashi brought the meeting to order at 12:05 p.m.

Miscellaneous Business:

Dawn Atkin moved that the minutes from the September 18, 2013, meeting be approved. Brandt Goble seconded the motion. Voting was unanimous in the affirmative.

Labor Commission Budget/Premium Surcharge Funds:

Dave Lamb, distributed handouts regarding the UEF, ERF, IARA, and Workplace Safety funds. Dave introduced Scott Stevens from the Tax Commission. Mr. Stevens explained how the Tax Commission records the monies coming into the funds: estimates each quarter which are reversed when the actual return is filed annually.

Ron Dressler reviewed a handout on investment options for the ERF and UEF funds that the Treasurer's office had prepared. He explained that there were at least three options that the Commission would be looking at: 1) changing how the ERF and UEF funds are being invested; 2) developing a loss cost portfolio; and 3) annuitizing the ERF claims either as a whole or on an individual basis.

Discussion was held. It was suggested that two smaller groups be formed to gather information on 1) the annuity options and 2) the soundness of the investing options or an investment policy for the funds.

Adjudication Update:

Heather Gunnarson explained that the Division had hired a Medical Director in November, but due to personal issues, he resigned. There were several candidates in the original pool that the Division is looking at again and there should not be a need to reopen the position.

Heather also presented a handout of the proposed changes to rule R602-2-1, Pleadings and Discovery. She explained that the changes for the most part just set page limits and what types of pleadings would be allowed. The Council has already had a chance to review this rule. The proposed rule will be presented at the quarterly attorney meeting hosted by the Division next week.

Dawn Atkin suggested that the time for response to Objections to Medical Panels should be consistent with other response timeframe.

Dawn Atkin moved to approve the rule change with the revision at R602-2-B of responses to Objections to Medical Panels being changed from 7 days to 10 days. Brian Kelm seconded the motion. Voting was unanimous in the affirmative.

Workplace Safety Account

Elena Bensor reviewed a handout that set forth the names of grantees and the amounts they had been awarded for the FY14 and the Calendar year 2014. She explained that this overlap is because of the change from fiscal year awards to calendar year awards. Changing to a calendar year allows for better knowledge of what funds are in the account prior to awarding the grants.

David Bird requested that the council be given more information regarding the grants. He would like the council to know what the grants were for how the monies were actually spent.

Legislative and Rule-Making Matters:

1. Workers' Compensation Amendments – Sen. Valentine:

Jacson Maughan reviewed this proposed legislation. He explained that this bill gives the Commission explicit authority to approve settlements and it extinguishes employer liability. Brian Kelm raised the concern that the wording of this bill seems to limit the Commission's authority of approving settlements to only those situations listed. Jeff Rowley raised a concern with destroying records and the interest rate being set at 8%. He suggested that the interest rate should be tied to the CPI. Dawn Atkin stated that with a rolling interest rate, it makes figuring what is owed difficult for past years.

Jacson will provide these comments to Sen. Valentine.

2. Domestic Employee Definition – Rep. Edwards:

Representative Edwards presented this bill to the council. She stated that this bill is intended to provide coverage for domestic help for disabled persons in their homes. She explained that the situation

that prompted this bill was a domestic worker slipped in the shower while helping a disabled person, and sustained significant injury and the homeowners insurance was not paying because it was considered to be workers compensation claim.

Discussion was held that the burden of coverage should be borne by the worker not the family, because the worker would be considered an independent contractor. The situation of a worker working for several families for 1-2 hours a week would be covered by all of the families and would cost the families approximately \$400 a year to have the coverage.

3. Injured Worker Reemployment Amendments – Rep. Dunnigan:

Rep. Dunnigan presented this bill. He stated that this bill defines gainful employment; establishes the voluntary intent of reemployment; and states when reemployment reports must be provided to injured workers.

Discussion was held. It was suggested that at Line 356 the wording should be changed to “prepared and used”. Dawn Atkin suggested that there are 2 meanings of ‘gainful’ employment one in the PTD statute and one here.

David Davis moved to support this bill, with there being some “word-smithing” done. Brandt Goble seconded the motion. Voting was unanimous in the affirmative.

4. Docketing Awards Amendments – Sen. Mayne:

Jacson Maughan presented this bill. He explained that this bill establishes when Commission decisions are final and can be enforced.

David Bird moved that the Council support this bill. Brian Kelm seconded the motion. Voting was unanimous in the affirmative.

5. Controlled Substance Amendments – Sen. Mayne:

Dennis Lloyd presented this bill. He explained that this bill changed “major contributing factor” to just “a contributing factor”. The bill also establishes how an employee can rebut the contributing factor assessment.

Discussion was held. Changing the “major” to “a” could result in the situation where if any substance (alcohol or drugs) is found in the injured workers system, there would be no benefits awarded even if the accident was not within the control of the injured worker; such as being hit from behind or having something fall on them. It was also suggested that the standard of proof for the employee to rebut is a standard that is impossible to meet.

Dawn Atkin moved that a small group meet with Sen. Mayne to discuss this bill. Dave Davis seconded the motion. Voting was unanimous.

6. Industrial Accident Rules

Ron Dressler mentioned that within the next couple of weeks, he will send out to the council the draft proposal to change the remaining rules as a result of the Governor’s request for agencies to review their rules. If the Council feels that discussion regarding these changes needs to be had, it will be dealt with in the April meeting. However, if the council agrees, the Commission will move forward with the change.

7. Other Proposals?

Dennis Lloyd presented a bill by Sen. Mayne that would establish the third full week of June as Workplace Safety Week.

Dave Davis moved to support this bill. Todd Kiser seconded the motion. Voting was unanimous in the affirmative.

Other Business:

Meetings for 2014:

April 9 (Wed) at noon - changed to April 23

July 9 (Wed) at noon

And September 10 (Wed) at noon.

Dawn Atkin moved to adjourn the meeting. Voting was unanimous in the affirmative.
Meeting adjourned at 2:37 pm.